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UNITED STATES-ISRAEL FREE TRADE AREA

SEPTEMBER 27, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 5377]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5377) authorizing the President to enter into, and to proclaim modifications necessary to implement, a trade agreement with Israel providing for duty-free treatment for, and the elimination of import restrictions on, the products of Israel, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

BACKGROUND AND PURPOSE

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations originally proposed by the Israeli Government in 1981 with a view to concluding a U.S.-Israel free trade area to eliminate tariffs and other trade distorting practices between the two countries. Since 1981, the U.S. Government has reviewed the economic and political merits of the proposal and determined the United States could gain substantially from a free trade area with Israel. The Office of the U.S. Trade Representative has been heading the negotiations for the United States since they began in mid-January 1984.

Unlike the Caribbean Basin Initiative (CBI) authorized by the Congress in 1983 under the Caribbean Basin Economic Recovery Act (P.L. 98-67), the U.S.-Israel arrangement would be a two-way free trade area. Article XXIV of the General Agreement on Tariffs

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and Trade (GATT) permits free trade areas or customs unions as a deviation from the nondiscrimination, most-favored-nation (MFN) principle of Article I if the agreement meets certain criteria. GATT-approved free trade areas (1) must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than the parties had in place prior to the agreement. An "interim agreement" can qualify under Article XIV if it contains a plan and schedule for formation of the free trade area "within a reasonable length of time." Waivers may be sought under GATT provisions for free trade area proposals which do not meet the requirements.

A free trade area with Israel wold be the first such arrangement entered into by the United States with any country aside from the bilateral free trade arrangement with Canada in the atuomotive sector only. At the present time the President does not have authority to enter into or to proclaim duty-free treatment under a free trade area arrangement with Israel or any other country.

EC-Israel free trade area

In 1975 the European Communities (EC) and Israel established a bilateral free trade area on industrial products. EC imports of most industrial goods were granted duty-free treatment after July 1, 1977, with full concessions on certain sensitive items (refined petroleum products, textiles, and certain chemicals) delayed until December 31, 1979. Israel's concessions to the EC were staged over a much longer period of time. Israel eliminated tariffs on about 60 percent of its industrial imports from the EC between 1975 and 1980. Israel is due to complete staging of duty-free treatment for the remaining more sensitive products by no later than 1989.

Coverage of agricultural products under the free trade area is much more limited. The EC offered preferential tariff treatment on 80 percent of its agricultural imports from Israel, including citrus products, but the Common Agricultural Policy remains in effect (especially the imposition of a reference price for certain fruits and vegetables). Israel's agricultural tariff concessions to the EC were minimal, consisting of reductions of 15 to 25 percent on only about one percent of total EC agricultural exports to Israel. Under the agreement, Israel must also eliminate all quantitative restrictions on imports from the EC by 1984.

Current U.S./Israel tariff treatment under GSP

Israel is a beneficiary of duty-free treatment on eligible imports under the U.S. Generalized System of Preferences (GSP) as a result of a bilateral Understanding entered into with the United States in October 1975. Section 502(b)(3) of the Trade Act of 1974 authorizing GSP requires that GSP beneficiaries eliminate any "reverse" preferential treatment whch they grant to developed countries "with a significant adverse effect on U.S. commerce."

In order to obtain GSP eligibility in view of its preferences to the EC under the free trade area, Israel agreed in a bilateral GSP Understanding to lower its MFN duties on 132 items of export interest to the United States on an unbound basis to the EC preferential rate level if specified criteria were met (imports of the product from the United States exceed a certain share of the Israeli market, a percent annual growth rate, and an absolute value) or "if U.S. trade in such items would otherwise be adversely affected in significant measure." Duties were reduced on these items from an average level of 24 percent in 1975 to 10.5 percent in 1981, and will be reduced further to about 6.4 percent in 1985 as opposed to an average MFN level of 10.5 percent.

Israel is the seventh largest annual beneficiary of the U.S. GSP program, receiving 4.4 percent of total GSP benefits. GSP duty-free imports totalled $474 million or 38 percent of total U.S. imports from Israel in 1983 of $1,250 million. Israeli preferential treatment of U.S. exports under the GSP understanding would terminate if Israel's benefits under the GSP program expire.

U.S.-Israel trade

The United States is Israel's major trading partner, providing a market for about 25 percent of Israel's total exports and supplying about 20 percent of its total non-military imports. The United States has enjoyed a trade surplus historically and consistently with Israel despite the fact that a substantially larger proportion of U.S. exports to Israel are subject to tariff protection than Israel exports to the United States. In 1983, the U.S. trade surplus was about $400 million, excluding military goods.

Israel currently imports from all sources about $8 billion worth of goods and $6 billion worth of services, excluding imports for military use. U.S. total non-military exports to Israel in 1982 were about $1.5 billion and about $1.7 billion in 1983. Based on 1982 data, about 60 percent of total U.S. exports to Israel currently enter duty-free, including 22 percent on an MFN bound basis. Israeli Government purchases of agricultural products duty-free totaled about $300 million in 1983. Over 40 percent of total U.S. non-military exports to Israel are currently dutiable at an average duty exceeding 10 percent. The major U.S. dutiable exports to Israel are motor vehicles, electrical goods and apparatus, kraftliner, synthetic yarns, automatic data processing machines, fasteners, medical apparatus, and controlling instruments.

After the full implementation of the EC-Israel free trade area in 1989, U.S. dutiable exports will face an average tariff disadvantage of about 10.5 percent in relation to European exports to Israel entering duty-free. Already U.S. products are facing an increasing disadvantage in the Israeli market as the EC-Israel free trade area is completed. The EC will also gain a margin of preference on the products covered by the GSP Understanding. The economic advantage to the United States of a free trade area would be elimination of tariff barriers on nearly one-half of U.S. exports to Israel and removal of the EC competitive duty-free advantage, particularly in industrial products which directly compete with the EC or are not covered by the GSP Understanding. An arrangement also offers the opportunity to open the Israeli service sector to U.S. competition and to obtain specific commitments to reduce Israeli subsidy and other nontariff practices that distort U.S. trade.

Over the past five years, U.S. imports from Israel have increased more than 70 percent from $749 million in 1979 to $1.2 billion in

1982 and $1.3 billion in 1983. Despite this growth, however, U.S. imports from Israel constitute only about 0.5 percent of total U.S. imports. About $1 billion, or 90 percent of U.S. imports from Israel currently enter duty-tree either on an MFN basis (55 percent) or under GSP (35 percent). Polished diamond and civil aircraft are the main imports entering duty-free. Of the remaining 10 percent of total imports which are dutiable, about 40 percent consists of agricultural products ($49 million in 1982). Imports from Israel subject to duty tend to be high tariff items such as textiles and apparel, jewelry, citrus, handmade glassware, flowers, processed tomato products, olives, footwear, and bromine chemicals.

The main benefits of a free trade area to Israel as a small sized economy would be duty-free treatment for products not presently covered by GSP and secure, predictable duty-free treatment on items currently under GSP but subject to overall changes in status, particularly if the GSP program is not renewed beyond its statutory termination date of January 3, 1985. Israel expects a free trade area would ensure free market access to two major markets—the EC and the United States—thereby encouraging investment, industrial development, and an improved balance-of-payments position.

SUMMARY OF U.S. NONMILITARY TRADE WITH ISRAEL, 1980—JANUARY-MAY 1984

[In millions of dollars]

	Exports	Imports	Balance
1980	1,393	941	+452
1981	1,501	1,235	+266
1982	1,529	1,162	+367
1983	1,715	1,250	+465
January-May 1983	648	1,235	+109
January-May 1984	792	941	+25

SUMMARY OF TRADE WITH ISRAEL, 1982

[Dollars in millions]

	Value	Percent of total
Total U.S. exports to Israel	$1,529	100
Agricultural exports	421	28
Nonagricultural exports	1,108	72
Dutiable exports	609	40
Duty-free exports	920	60
Total U.S. imports from Israel	1,162	100
Agricultural imports	49	4
Nonagricultural imports	1,113	96
MFN duty-free imports	641	55
MFN dutiable imports	72	6
GSP duty-free imports	403	35
GSP dutiable imports[1]	46	4

[1] GSP eligible articles that do not acutally receive duty-free treatment because imports exceed competitive need limits or do not meet rule-of-origin or other requirements.

Source: Office of the U.S. Trade Representative.

SUMMARY OF H.R. 5377, AS AMENDED

Section 1. Short title

"United States-Israel Free Trade Area Act"

Section 2. Basic authority

Section 2 authorizes the President to enter into a "reciprocal and mutually advantageous" trade agreement with the government of Israel providing for duty-free treatment and the harmonization, reduction, or elimination of nontariff barriers to (and other distortions of) trade between the United States and Israel.

The President may proclaim duty-free treatment without further Congressional approval. Any provision on nontariff measures would enter into force only if the advance Congressional consultation and notification requirements are met and implementing legislation approved under the expedited procedures of sections 102 and 151–154 of the Trade Act of 1974.

Section 3. Rules of origin

Section 3 requires that Israeli articles under the trade agreement meet rules-of-origin equivalent to such requirements under the Caribbean Basin Economic Recovery Act (CBI): direct importation; 35 percent minimum local content, of which a maximum of 15 percent may be U.S. content; substantial transformation; prohibition of mere "pass through" operations.

Section 4. Import relief provisions

Section 4 contains various provisions concerning the application of import relief actions to Israeli articles under a free trade area arrangement, including authorities for the President to suspend duty-free treatment and proclaim a duty rate on an Israeli article under the free trade area agreement as import relief or to safeguard the national security. The International Trade Commission (ITC) must state in its report to the President on any import relief investigation whether its findings apply to imports from Israel.

Section 5. Emergency relief for imports of agricultural perishables products

Section 5 establishes procedures equivalent to provisions under the CBI for obtaining interim emergency relief from duty-free imports of agricultural perishable products from Israel pending action under normal import relief procedures.

Section 6. Application of other trade laws

Section 6 ensures that existing laws for relief from import competition and unfair trade practices (e.g., countervailing duty, antidumping, and section 337 provisions of the Tariff Act of 1930; safeguarding national security under section 232 of the Trade Expansion Act of 1962; sections 201–203 and section 301 of the Trade Act of 1974) would continue to apply to Israeli articles entering under a free trade area agreement. No trade benefit to Israel authorized under this legislation can be extended to any other country, notwithstanding any other provision of law.

COMMITTEE ACTION

The Subcommittee on Trade of the Committee on Ways and Means held three days of hearings on the proposed United States-Israel free trade area, including on H.R. 5377, on May 22 and June 13 and 14, 1984. The Subcommittee received extensive testimony and statements for the record as printed in serial 98-72, as well as extensive subsequent written comments. Testimony from the Administration, Members of Congress, and the private sector and written comments from individual firms and business associations generally supported a U.S.-Israel free trade area, with Members of Congress and business associations representing specialty agricultural product and certain manufacturing interests seeking exemption of certain products or other amendments. The AFL-CIO, the American Fiber, Textile, Apparel Coalition, the Leather Products Coalition, and certain agricultural associations in California opposed the proposal.

On June 26, 1984, the Subcommittee held a conceptual markup discussion of H.R. 5377, and in markup session on September 12 ordered H.R. 5377 favorably reported to the full Committee on Ways and Means by voice vote with an amendment in the form of a substitute.

On September 26, 1984, the Committee on Ways and Means ordered H.R. 5377 favorably reported to the House by voice vote with an amendment by a roll-call vote of 33 yeas, 0 noes.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

H.R. 5377, as amended and ordered reported by the Committee on Ways and Means, sets forth authorities and conditions for establishment of a free trade area between the United States and Israel.

Section 1. Short title

The short title for citing this Act is the "United States-Israel Free Trade Area Act."

Section 2. Basic authority

Section 2 of H.R. 5377 as amended provides the basic authorities for the President to establish and implement a free trade area arrangement between the United States and Israel. Subsection (a) authorizes the President, subject to sections 3, 4, 5, and 6 of the Act, to enter into a "reciprocal and mutually advantageous" trade agreement with the Government of Israel providing for:

(1) the continuance of existing duty-free treatment of, and the elimination of existing duties on, articles that are eligible Israeli articles meeting the rule-of-origin requirements under section 3; and

(2) the harmonization, reduction, or elimination of nontariff barriers to (and other distortions of) trade between the United States and Israel.

Subsection (b)(1) authorizes the President to proclaim the continuances and modifications regarding duty-free treatment of eligible Israeli articles as he determines to be necessary or appropriate to carry out the trade agreement authorized under subsection (a)(1).

Subsection (b)(2) requires that the provisions of the trade agreement pertaining to nontariff barriers and other trade distortions be treated as a trade agreement entered into under the authority of section 102 of the Trade Act of 1974. Such provisions shall enter into force with respect to the United States only if section 102 (c), (d), and (e) are complied with in regard to those provisions.

Granting authority to the President to proclaim tariff changes, while reserving implementation of changes in U.S. laws to modify other trade barriers or practices to approval by the Congress is consistent with historic practice since enactment of the Reciprocal Trade Agreements Act of 1934 (P.L. 73-316). Since 1934, the Congress periodically has empowered the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations. The most recent grant of such basic authority was contained in section 101 of the Trade Act of 1974, which served as the basis for negotiation of tariff reductions in the most recent multilateral trade negotiations (Tokyo Round) concluded in 1979. The President's basic tariff negotiating and proclamation authority expired on January 2, 1980. Section 124 of the Trade Act further provided the President, for another two years, residual authority to negotiate tariff adjustments within narrow limits and to correct discrepancies and anomalies resulting from the basic multilateral agreement. As section 124 has not been renewed since its expiration on January 2, 1982, the President currently does not have tariff proclamation authority.

Section 102 of the Trade Act of 1974 also separately directed and authorized negotiations of trade agreements to harmonize, reduce, or eliminate nontariff barriers to or other distortions of trade. Such agreements may also provide for the prohibition of, or limitations on, the imposition of such barriers or other distortions. In section 1101 of the Trade Agreements Act of 1979 the Congress renewed the trade agreement authority on nontariff barriers for eight years until January 2, 1988.

In contrast to traditional tariff proclamation authority, however, a nontariff barrier agreement negotiated under section 102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless the President adheres to certain requirements for presentation to the Congress and implementing legislation approving the agreement and any changes in U.S. law is enacted into law. Sections 102 (c)-(f) and 151-154 prescribe the following expedited procedures for Congressional approval:

(1) Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over subject matters affected by the agreement, especially regarding issues of implementation.

(2) The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

(3) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law,

and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

(4) The implementing bill is introducing in both Houses of Congress on the day it is submitted by the President. The bill is referred to the committee or committees of jurisdiction. The committees have 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period.

(5) Each House votes on the bill within 15 legislative days after the measure has been received from the committee or committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs 3, 4, and 5 were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of each House's rules. The procedures may be changed in the same manner as any other rules.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance, while at the same time ensuring expeditious action on the final agreement and implementing bill. This process was used successfully in approving the Tokyo Round trade agreements and the Trade Agreements Act of 1979.

Section 2 of H.R. 5377 as amended, authorizes the President to negotiate and enter into a trade agreement providing for a free trade area with Israel. Consistent with the historic pattern, the modification of U.S. rates of duty with respect to imports from Israel would become effective according to the terms of the proclamation without further Congressional action being required; the provisions under sections 3, 4, 5, and 6 of the bill necessary to administer the tariff modifications under the trade agreement would also become effective at the same time without further Congressional approval being necessary. Any other provisions of the agreement pertaining to nontariff barriers to or other distortions of trade, or to any other substantive changes in U.S. law as they apply under the agreement, would be enacted only after Congressional approval under the procedures described above.

The basic authority granted to the President under section 2 of H.R. 5377 as amended to enter into a trade agreement with Israel is limited to an agreement which he determines to be "reciprocal and mutually advantageous". In this connection, considerable concern has been expressed by Members of Congress and the private sector about subsidy programs and import restrictive measures maintained by Israel which could subject U.S. industries and workers to unfair import competition under a free trade area, particularly in the agricultural sector, or restrict the ability of U.S. exporters to take advantage of opportunities in the Israeli market under a free trade area.

The Committee believes it is essential to achieving mutual advantage in a free trade area under conditions of fair competition, and in the interest of the Israeli economy itself, that the Israeli government enter into a commitment with the United States to impose a standstill on the coverage and forms of its subsidy programs and agree to phase out and eliminate its existing subsidy practices. Such a commitment should be a precondition to U.S. agreement to enter into a free trade area. This commitment would also serve as a basis for Israel to join the GATT Agreement on Subsidies and Countervailing Measures and permit extension of the injury test under the U.S. countervailing duty law.

In addition, the Committee is concerned that various forms of import restrictions imposed by Israel ostensibly for balance-of-payments reasons or to protect infant industries could potentially negate the benefits of duty-free treatment for U.S. exporters. Consequently, it is essential that the agreement contain strict disciplines to ensure that balance-of-payments and infant industry related measures are temporary in nature, that relative advantages to the United States under the free trade area are maintained, and in the case of balance-of-payments measures, that the purpose is not to protect particular domestic industries. Procedures for periodic review of the operation of the agreement and settlement of possible disputes should also be provided in the arrangement.

The Committee understands that U.S. negotiators are seeking such commitments and disciplines in the agreement and strongly supports these efforts.

Considerable concern has also been expressed by Members of the Committee, other Members of Congress, and by the private sector that duty-free imports from Israel of various products currently subject to duty, paticularly cetain fresh and processed agricultural products, bromine compounds, textiles and apparel, and footwear and other leather-related products, may have an injurious impact on U.S. industries and workers. While the size of the Israeli economy and restricted land and resources limit its overall potential production and export capacity, significant increases in imports from Israel may result from duty-free treatment on particular products that could add to the difficulties already experienced by certain U.S. industries in competing with imports generally. There is also concern that a free trade area with Israel may set a precedent for negotiating similar arrangements with other countries. Representatives of these interests have requested statutory exclusions from the coverage of a free trade area with Israel.

The Committee is concerned about this problem, and expects the President to minimize any potential adverse effects on the U.S. economy through negotiation and implementation of this agreement. The Committee has received assurances from the USTR that the agreement itself will provide special treatment of products for which available information and advice indicate that increased imports under a free trade ageement may have an adverse impact on U.S. industries and workers. Such treatment might take the form of temporary exclusion of certain particularly import-sensitive products from the arrangement and the phase-in of duty-free treatment over a period of years in order to facilitate the adjustment process. The Committee expects such judgments to be based upon the advice requested and received by the President from the International Trade Commission on the probable domestic impact of duty-free treatment on particular products, information from private sector representatives, as well as other available sources. It is the Committee's understanding that it is the intention of the USTR to provide for the phased-in treatment of duty-free treatment over a period of years on products for which the ITC believes there is a potential threat of significant adverse impact from increased Israeli imports, as well as on other products which are deemed to be import-sensitive.

After careful consideration, however, the Committee believes it is unnecessary as a result of these assurances and, in fact, would be contrary to overall U.S. trade interests to exclude specific products by statute from the President's negotiating authority. About 90 percent of total U.S. imports from Israel already enter duty-free under MFN provisions or the GSP program, whereas only about 45 percent of U.S. exports to Israel now enter duty-free. By 1989, the European Communities will enjoy the advantage of preferential duty-free access to the Israeli market on many products in which the United States would otherwise enjoy a competitive export advantage. If the United States excludes an extensive list of products from consideration for duty-free access, Israel is likely to exempt products from duty-free access to its market of significant export interest to the United States. The loss of U.S. production and jobs associated with the loss of export opportunities in Israel must be weighed against the potential impact on other domestic industries of increased Israeli import competition. Therefore, achievement of maximum reciprocal export benefits for both Israeli and the United States to make the effort of negotiating and implementing a free trade area worthwhile requires comprehensive product coverage by both countries. Furthermore, compliance with GATT Article XXIV standards requires that a free trade area cover "substantially all" trade between the parties.

It should also be recognized that a free trade area with Israel is intended to be a permanent, not temporary arrangement. Consequently, economic conditions in both Israel and the United States, including the sensitivity of particular products to import competition, will change during the course of the agreement. The listing of product exclusions in the statutory authority could become outdated as competitive conditions change, thereby resulting in a loss of reciprocal benefits under a free trade area in the future for no economic reason.

H.R. 5377, as amended, maintains the flexibility for U.S. negotiators to achieve reciprocal product coverage that in their judgment maximizes the economic advantages of a free trade area in the overall U.S. interest.

Section 3. Rules of origin

Section 3 of H.R. 5377 as amended stipulated that provisions of the trade agreement entered into under section 2(a)(1) of the bill apply only to Israeli articles that meet rule-of-origin requirements equivalent to such rules imposed under section 213(a) of the Caribbean Basin Economic Recovery Act (CBI) for purposes of extending duty-free treatment to products of CBI beneficiary countries. In order to be eligible for treatment, under the free trade area, an Israeli article must meet three basic rule-of-origin requirements: (1) a product wholly of Israel or "substantially transformed" in Israel into a new or different article; (2) direct importation; and (3) 35 percent minimum local content. In addition, rules equivalent to those under the CBI which specifically prohibit strictly "pass through" operations from qualifying for duty-free entry would also apply.

The first requirement would prohibit mere "pass-through" operations involving little value-added in Israel. In order to be eligible under the trade agreement, the articles must be wholly the growth, product, or manufacture of Israel, or must be a new or different article of commerce which has been grown, produced, or manufactured in Israel.

The second requirement for direct importation from Israel into the customs territory of the United States is identical to the direct importation requirement under present law for duty-free treatment of eligible artricles from Israel and other beneficiary countries under the Generalized System of Preferences.

Under the third requirement, a minimum of 35 percent of the appraised value of the imported article must consist of the cost or value of materials produced in Israel plus the direct cost of processing operations performed in Israel. This minimum level corresponds to the requirement for eligibility for duty-free treatment under GSP. There would also be as credit allowed for including a certain amount of U.S. content in Israeli articles; of the total value of the article which may consist of materials or components produced in the United States, up to 15 percent may be applied toward meeting the 35 percent minimum domestic content requirement.

The regulations that the Secretary of the Treasury must issue to implement the rules of origin with respect to Israel must also prohibit eligibility for duty-free treatment if the product to be imported merely undergoes certain minor operations, that is a simple combining or packaging operation or mere dilution with water or mere dilution with another substance which does not materially alter the article.

The object of these provisions is to prevent pass-through operations in which the work performed is of little economic benefit to Israel and constituters avoidance of U.S. duties. Examples of activities that the U.S. Customs Service should consider as insufficient include the addition of batteries to devices; simply fitting together a small number of components by bolting, glueing, soldering, etc., merely repacking or packaging together components; merely diluting with water, such as reconstituting orange juice concentrate; merely diluting chemicals with inert ingredients to bring them to standard degrees of strength; or the addition of substances such as anticaking agents, preservatives, wetting agents, etc. The provision would not preclude meaningful assembly operations utilizing foreign components, provided the assembly is of significance to the local economy, meets the 35 percent local content rule, and results in a new and different article.

As under the CBI and GSP, the types of direct costs of processing operations performed in Israel which may be included for purposes of meeting the minimum 35 percent local content requirement would include, but are not limited to, all actual labor costs involved in producing the imported article, including on-the-job training, fringe benefits, and certain other costs; and dies, molds, tooling, and depreciation on machinery and equipment allocable to the specific merchandise. Costs which are not directly attibutable to the merchandise concerned or are not costs of manufacturing the product, such as profit and general expenses of doing business, cannot be considered direct costs of processing operations. This provision conforms to current regulatory language used in administering GSP.

Subsection (c) requires the Secretary of the Treasury to prescribe regulation to administer these rules-of-origin requirements after consultation with the USTR.

Section 4. Import relief provisions

As provided under section 6(a) of the bill as amended, the standard import relief criteria and procedures under section 201–203 of the Trade Act of 1974 would continue to apply to any Israeli article imported under a free trade area arrangement entered into or proclaimed under the authorities in section 2. Under the import relief procedures, a domestic industry may seek a finding from the International Trade Commission that increased imports are a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive article. The ITC must report its determination to the President within six months with a recommended remedy if the finding is affirmative. In such cases, the President has 60 days to determine whether to provide import relief in the form of tariff increases, tariff-rate quotas, quantitative restrictions, orderly marketing agreements, or a combination of these measures for up to five years, subject to a possible three-year extension.

Section 4 contains various provisions concerning the application of import relief under the Trade Act and under section 232 of the Trade Expansion Act of 1962 to Israeli articles under a free trade area arrangement. Subsection (a) authorizes the President to suspend duty-free treatment on any eligible Israeli article and proclaim a rate of duty on that article if such action is proclaimed as import relief under section 203 of the Trade Act or as a national security measure under section 232 of the Trade Expansion Act of 1962.

Subsection (b) requires the ITC, in any report to the President on an import relief investigation covering an Israeli article subject to duty-free treatment, to state whether its findings and recommendation apply to imports from Israel of that article.

The authority of the President is in no way limited by these provisions to impose any form of relief authorized under the Trade Act with respect to all imports of an article, including imports from

Israel. However, the President would have discretion to maintain duty-free treatment on imports from Israel regardless of the ITC's findings, while either denying or granting tariff or tariff-quota relief on imports of the article from other countries. Alternatively, the President would have the flexibility to maintain a margin of preference for imports from Israel by establishing an intermediate rate of duty on such imports rather than either restoring the previous MFN rate or imposing a higher rate established as tariff or tariff-rate quota relief on imports from other countries. Similar discretion and flexibility would apply in the case of national security actions.

Under subsection (c) the President may treat as an increase in duty for purposes of import relief the suspension of duty-free treatment under subsection (a). As provided under subsection (d), the President may suspend duty-free treatment as the sole import relief measure (without imposing relief generally) only if the ITC, in addition to making an affirmative determination, determines in the course of its import relief investigation that the serious injury to a domestic industry substantially caused by imports results from duty-free treatment on imports from Israel. These provisions are identical to present law with respect to GSP imports.

Subsection (e) provides that import relief measures or adjustments to imports to protect the national security in effect at the time duty-free treatment is proclaimed under section 2(b)(1) of the bill would continue in effect until modified or terminated. However, the President may terminate or modify existing import relief with respect to imports from Israel prior to its otherwise scheduled termination or reduction date if he determines such action to be in the national interest after following the procedures in section 203(h) and (i) of the Trade Act, which require that he obtain the advice of the ITC, the Secretary of Labor, and the Secretary of Commerce.

Section 5. Emergency relief for imports of agricultural perishable products

Section 5 of H.R. 5377 as amended, establishes a special procedure identical to the provisions of section 213(f) of the Caribbean Basin Economic Recovery Act to provide interim emergency relief during the pendency of a normal import relief proceeding from imports of agricultural perishable products from Israeli accorded duty-free treatment under the trade agreement authorized by section 2. This provision is a recognition of the unique nature of agricultural perishables and a response to concerns expressed to the Committee by domestic specialty crop interests about the possible consequences of duty-free treatment of agricultural perishables from Israel.

If a petition for relief from imports of an agricultural perishable product from Israel is filled with the International Trade Commission under section 201 of the Trade Act of 1974, the petitioners may also file with the Secretary of Agriculture a request for emergency relief. Within 14 days the Secretary must determine whether there is "reason to believe" a perishable product from Israel is being imported in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive product. The Secretary must then advise the President and recommend emergency relief if warranted, or publish notice and advise the petitioner of his determination not to recommend emergency action. Within 7 days after he receives a recommendation for emergency relief from the Secretary of Agriculture, the President must issue a proclamation withdrawing the duty-free treatment or publish a notice of his determination not to take action.

Emergency relief under this provision would be limited to the restoration of normal rates of duty. The President may not proclaim higher rates during the emergency period, nor may he proclaim an intermediate rate of duty. The emergency action ceases to apply on the date that one of four conditions is met:

a. Final import relief is declared;

b. The President determines not to grant final import relief;

c. The ITC submits a report to the President containing a negative finding on a request for import relief; or

d. Whenever the President determines that due to changed circumstances such relief is no longer warranted.

Subsection (e) defines the term "perishable product" to include live plants, most fresh or chilled vegetables, fresh mushrooms, most fresh fruit, fresh cut flowers, and concentrated citrus fruit juice.

The purpose of this emergency expedited relief procedure is to safeguard against the effects of a sudden influx of agricultural imports as a result of granting duty-free treatment. If such imports were to cause sudden injury to domestic producers of perishable goods by depriving them of an opportunity to sell such products, the normal six-month investigation for standard import relief would not afford a meaningful remedy. By the time relief is obtained, the goods in question would no longer be marketable. This provision would merely restore the tariff treatment which existed prior to the granting of duty-free entry until a final decision on import relief can be made, thereby assuring some degree of protection for domestic growers against a possible sudden surge of duty-free imports.

In order to respond quickly to requests for emergency relief, the Department of Agriculture should apply procedures to Israel similar to those the Committee expected to be established under the CBI for maintaining update information on imports and domestic production of perishable products on a continuing basis, simplified procedures for filing petitions for relief, and exchange of information with the U.S. Customs Service.

Section 5 supplements existing import relief law (sections 201-203 of the Trade Act of 1974), which does not provide for emergency relief with respect to perishable goods. However, pursuant to section 22 of the Agricultural Adjustment Act of 1933, the President may, upon recommendation of the Secretary of Agriculture, determine that emergency conditions warrant the imposition of fees or quotas on agricultural products to protect a price support program pending the outcome of a full investigation. Section 22 contains similar requirements to those in section 5, including a requirement that the Secretary of Agriculture determine that there is a "reason to believe" that imports may cause harm.

Finally, subsection (f) provides that no proclamation issued under section 2(b)(1) shall affect fees imposed under section 22 of the Agricultural Adjustment Act. Section 22 authorizes the President to impose import fees of up to 50 percent ad valorem if he finds that a particular product is being imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfer with any domestic price support program or substantially reduce domestic support by such a program.

Subsection (f) makes clear that fees are to be imposed pursuant to section 22 without regard to the proclamation authority under section 2(b)(1). Thus, imports of commodities may enter the United States duty-free pursuant to the trade agreement with Israel but nevertheless be subject to fees, as are all othe imports of the same commodity. However, Israel would maintain a relative duty advantage over other imports, at the same time the President uses section 22 to protect price support programs.

Section 6. Application of other laws

Section 6 of H.R. 5377, as amended, clarifies the relationship between the trade agreement authjorized by section 2 of this Act and other existing trade laws.

Subsection (a) makes clear that neither the taking effect of, any trade agreement provision entered into under section 2(a)(1), nor any proclamation issued under section 2(b)(1) relating to duty-free treatment of Israeli articles may affect in any manner or to any extent the application to Israeli articles of existing laws under which relief from injurious import competition or unfair trade practices may be sought. Such laws include relief under section 232 of the Trade Expansion Act of 1962 from imports threatening national security, relief under section 337 and the countervailing duty and antidumping provisions of the Tariff Act of 1930 from unfair import competition and subsidies and dumping practices, relief from injurious import competition under sections 201-203 of the Trade Act of 1974, enforcement of U.S. rights under trade agreements and response to unfair foreign trade practices under section 301 of the Trade Act of 1974, and any other provision of law providing relief from injurious import competition or unfair import trade practices.

Subsection (a) guarantees the U.S. industrties and workers will be afforded the same avenues for obtaining relief and the same remedies from potential injurious competition or unfair trade practices with respect to imports from Israel that persently exist for such imports, irrespective of the granting of duty-free treatment under a free trade area agreement. Any countervailing duty or antidumping duty orders outstanding on a particular article imported from Isreal on the date duty-free treatment or any intermediate rate of duty during the phase-in of the trade agreement becomes effective would continue to apply. A duty would be assessed in the amount of the countervailing or antidumping duty in addition to the existing duty, if any, until the order is revoked. Similarly, the amount of any countervailing or antidumping duty-free treatment or an interim rate of duty under the free trade area agreement would be assessed on imports of the particular article from Israel in addition to the interim duty or in lieu of duty-free treatment under the trade agreement.

Article XXIV of the GATT permits the creation of free trade areas as a derogation from the general rule under Article I that all GATT Contracting Parties are entitled to nondiscriminatory, most-favored-nation (MFN) trading treatment of their products. Such duty-free treatment is permitted only for the products traded between the parties to a free trade area which meets certain standards under Article XXIV. Countries entering into such arrangements are not obliged automatically to extend duty-free treatment to other GATT member countries on products covered by the agreement.

However, Members of the Committee have expressed considerable concern that a free trade area with Israel might result in extension of similar duty-free treatment to imports from other countries under provisions of bilateral treaties and executives agreements, or create a precedent for entering into additioal free trade arrangements. Consequently, the Committee included section 6(b) in H.R. 5377 as amended stating that, notwithstanding any other provision of law, no duty-free treatment or other trade benefit can be accorded to any country other than Israel by reason of the agreement authorized by this Act. Subsection (b) precludes any possibility, as a matter of domestic law, of extension through court decision or executive action of duty-free treatment to other countries pursuant to any existing treaties or executive agreements without further Congressional approval.

Any free trade areas with other countries could not be concluded or proclaimed by the President without Congressional consideration of the merits on a case-by-case basis and passage of authorizing legislation. At the same time, Committee makes clear that it does not preclude the possibility of future legislation to implement provisions of existing bilateral treaties or executive agreements and, in fact, would give consideration to initiative from other countries requesting reciprocal and mutual advantageous trade agreements.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 5377 was ordered favorably reported by the Committee on Ways and Means to the House by a roll call vote of 33 yeas, 0 noes with an amendment.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes on the basis of hearing testimony and a recent fact-finding visit to Israel by some of its Members, that establishment of a free trade area between the United States and Israel under the provision of the bill would be in the economic interest of both countries.

In regard to clause 2(l)(3)(D) of rule XI of the rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rules XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5377, as amended, does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rules XIII and with clause 2(l)(3)(B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 5377, as amended, and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined H.R. 5377, an act to create a U.S.-Israel Free Trade Area, as approved by the Committee on Ways and Means. The bill would authorize the President to enter into a reciprocal and mutually advantageous trade agreement with Israel. Specifically, the bill would authorize negotiation to harmonize, to reduce, or to eliminate tariff as well as non-tariff trade barriers.

The scope and content of a potential trade agreement with Israel cannot be known at this time. Therefore, it is impossible to estimate the potential costs or revenue effects of this bill.

With best wishes.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5377 as amended would not have an inflationary impact on prices and costs in the operation of the general economy.

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